

EXHIBIT 14

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION

Case No. 6:19-cv-01567-TMC

4 -----x
EDEN ROGERS and BRANDY WELCH,
Plaintiffs,

5 -against-
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;

6
7 XAVIER BECERRA, in his official
capacity as Secretary of the UNITED
8 STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES;

9
10 ADMINISTRATION FOR CHILDREN AND
FAMILIES;

11
12 JOOYEUN CHANG, in her official
capacity as Assistant Secretary of
13 the ADMINISTRATION FOR CHILDREN AND
FAMILIES;

14
15 JOOYEUN CHANG, in her official
capacity as Principal Deputy
Assistant Secretary of the
16 ADMINISTRATION FOR CHILDREN AND
FAMILIES;

17
18 HENRY McMASTER, in his official
capacity as Governor of the
STATE OF SOUTH CAROLINA; and

19
20 MICHAEL LEACH, in his official
capacity as State Director of the
SOUTH CAROLINA DEPARTMENT OF SOCIAL
21 SERVICES,

Defendants.

22 -----x

23 July 8, 2022
24 DEPOSITION OF SHANEKA McDANIEL-OLIVER
25

July 8, 2022

9:02 a.m.

Remote Videotaped 30(b)(6)

Deposition of South Carolina Department
of Social Services by SHANEKA
McDANIEL-OLIVER, taken pursuant to Notice
by Plaintiffs via Zoom before Dawn
Matera, a Certified Shorthand Reporter
and Notary Public for the State of New
York.

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1 A P P E A R A N C E S : (Continued)

2

3 Also Present:

4 ETHAN STRICKLAND, Summer Associate

5 GEORGINA WILSON, Summer Associate,
Cravath Swaine & Moore

6

ROCCO MERCURIO, Videographer

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DAN ACOSTA, Concierge

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1 Did I read that correctly?

2 A. Yes, I believe you did.

3 Q. Thank you. Can you tell me why
4 this is called an emergency contract?

5 A. It is called an emergency
6 because -- well, if you ever worked for
7 Department of Social Services, we have
8 kids coming into foster care at all times
9 of the day and all times of the night.
10 At this time we did not have a contract
11 in place, so we needed time to do a full
12 solicitation in order to get something
13 out there. So this is the way to make
14 sure the kids are safe and their
15 well-being is taken care of, otherwise we
16 would have kids in offices, we would have
17 kids in hotels and other means, which is
18 definitely not appropriate. It is best
19 for them to be in a foster home. So this
20 was a way for us to do that, by an
21 emergency contract. We typically do that
22 if an emergency situation arrives and we
23 have to give justification for that.

24 Q. So just to make sure I'm
25 understanding that correctly, does that

1 mean there was not a standard contract in
2 place with non-therapeutic CPAs prior to
3 this one?

4 A. There was not a therapeutic --
5 non-therapeutic contract in place before
6 this contract.

7 Q. And can you just briefly
8 explain before this contract how DSS did
9 partner with CPAs if it wasn't through a
10 DSS contract?

11 A. So we have non-therapeutic and
12 therapeutic. Therapeutic contracts are
13 under -- was under a contract.
14 Non-therapeutics, which we considered as
15 our regular, I don't know how else to
16 define it, but it's our regular foster
17 home. They give a particular board rate.
18 So they didn't have a contract until this
19 time frame because we treated them like
20 we would for our DSS foster homes,
21 although they were CPA providers.

22 Q. I'm sorry, can you repeat, you
23 said you treated them as something foster
24 homes?

25 A. So DSS had foster homes also.

1 They still have to go through the
2 licensing process. And then you have
3 your private CPAs, which would be this,
4 our child placing agencies. Miracle
5 Hill, a couple of other ones are, was
6 treated like our DSS foster homes. When
7 they got this centralized board rate,
8 non-therapeutic kids placed in
9 non-therapeutic homes.

10 Q. I see. Thank you for that
11 clarification. Were there some that I
12 think happened prior to this contract
13 that motivated DSS to enter into a
14 standard contract with all CPAs at that
15 time?

16 A. So prior to the 2019 contract,
17 there was, Miracle Hill was receiving a
18 subsidy of \$10 per day per child. Other
19 organizations did not receive that. So
20 in 2019 we made sure that all of the
21 other organizations did receive that same
22 \$10 per day per child.

23 Q. And do you know if there was a
24 reason that only Miracle Hill received
25 that -- is there a name for that \$10 per

1 child per day, is it an administrative
2 fee?

3 A. Yes, it is considered an
4 administrative fee. So there was a memo
5 in around 2015. The memo's intent was
6 for kids -- we were having a very hard
7 time placing kids. We didn't have enough
8 non-therapeutic foster kids. There was a
9 memo that non-therapeutic kids can now be
10 placed in CPAs.

11 That memo was meant for
12 non-therapeutic kids to be placed in
13 therapeutic homes that have more of a
14 capacity than our non-therapeutic
15 providers, even our internal DSS
16 providers. So that is how this came
17 about, with Miracle Hill. And they saw
18 the memo. There was a word missing from
19 the memo that says therapeutic providers.
20 And Miracle Hill was a group care
21 provider, not a therapeutic provider.
22 Saw the memo and said we qualify.

23 Q. I see. And I think you
24 answered the question I am about to ask.
25 When you say that Miracle Hill was a DSS

1 foster home, are you referring to Miracle
2 Hill group, as a group foster care home?

3 A. So Miracle Hill is a
4 non-therapeutic foster care CPA agency
5 and they were a group home. So they had
6 two different structures.

7 Q. And they no longer have a group
8 home; is that right?

9 A. That is correct.

10 Q. Thank you. So the last part of
11 this sentence refers to, "This contract
12 is needed in the interim until the full
13 solicitation is available." Can you tell
14 me what solicitation that refers to?

15 A. So at that time we were in the
16 process of scoping a solicitation for
17 non-therapeutic providers.

18 Q. Was that solicitation ever
19 completed?

20 A. It was completed "and I am not
21 sure, but I believe that we actually put
22 out the solicitation, and because we had
23 a protest on our group care contract, we
24 did not want two protests going on at
25 the same time, because some of the

1 did not list it into this contract, then
2 I cannot tell you. There are licensing
3 requirements that requires training and
4 we have Foster Parent Association that
5 does training. But for me to sit here
6 and tell you to list that, that's not in
7 my capacity.

8 Q. So you wouldn't be able to say,
9 for example, what kinds of training and
10 support around cultural sensitivities DSS
11 requires CPAs to provide?

12 A. So we have a contract with the
13 Foster Parent Association that has
14 trainings in it. There are a list of
15 trainings in that contract. I did not
16 bring that contract with me to go through
17 what trainings that are offered, but I do
18 know that we have Foster Parent
19 Association that has particular trainings
20 related and to assist CPAs. And I am
21 sure that some CPAs may have their own
22 training also. But I can tell you that
23 we have a contract with the Foster Parent
24 Association for training.

25 Q. Do you know if this provision

1 requires compliance with the trainings
2 and that contract that you just
3 described?

4 A. So that contract is for the
5 Foster Parent Association, so it is
6 pretty much for foster parents to go
7 through training. I don't know if it's a
8 requirement, but I do know that we have
9 Foster Parent Association and there is a
10 list of trainings that they must comply.
11 I am sure that there is probably
12 information in the licensing regulations.
13 Maybe, you know, I would say I would lean
14 on licensing to tell you that more so
15 than me. I don't want to tell you
16 something that is incorrect.

17 Q. So those trainings might have
18 been, but not necessarily, those specific
19 trainings aren't necessarily required?

20 A. So again, I will tell you that
21 licensing would be the best person, the
22 best, you know, part of the organization
23 to answer that, because that's their role
24 and responsibility. I can tell you that
25 we have the CPA, we have the FPA

1 contract, which we call Foster Parent
2 Association that has training in it.
3 Again, I did not bring that contract to
4 go over which trainings there were, but
5 there is that contract that has
6 trainings, and those trainings are geared
7 towards foster parents.

8 Q. Thank you very much. I want to
9 go back to what we were talking about
10 earlier, how this contract has changed
11 over time, and specifically with Miracle
12 Hill. So you had mentioned before that
13 Miracle Hill, and please correct me if I
14 am misstating anything that you said, but
15 I believe you mentioned that at one point
16 Miracle Hill was the only non-therapeutic
17 CPA that was providing foster care
18 services that was being reimbursed for
19 those services; is that right? And that
20 had to do with the missing word in the
21 memo that Miracle Hill felt they -- that
22 they were entitled to those funds?

23 A. So Miracle Hill started
24 receiving the \$10 per day per child. The
25 intent was to go to our therapeutic

1 organizations, not non-therapeutic
2 organizations.

3 And because of the
4 interpretation of that language, Miracle
5 Hill received that \$10 per day per child.

6 Q. And at that time Miracle Hill
7 was providing group home foster care
8 services and was receiving that payment
9 for those particular group home services;
10 is that right?

11 A. So Miracle Hill had a group
12 home at that time and they were under a
13 contract for group home. And they didn't
14 have a therapeutic agency.

15 Q. Does the fact that Miracle Hill
16 was receiving those funds at that time,
17 does that mean that Miracle Hill was the
18 only non-therapeutic CPA providing those
19 foster care services at that time?

20 A. So repeat that?

21 Q. So the fact that Miracle Hill
22 was receiving \$10 per day per child at
23 that time, does that mean that Miracle
24 Hill was the only non-therapeutic CPA
25 providing those foster care services at

1 that time?

2 A. No, that does not mean that.
3 But I will tell you that if another
4 non-therapeutic CPA requested, we would
5 have given them the \$10 per day per child
6 also.

7 Q. So I want to turn to a
8 different section of this contract, to
9 the page ending in 250, which I think is
10 the very end. Let me know when you see
11 that. Are you on that page?

12 A. Yes.

13 Q. So this page is titled Change
14 Order Number 5 and dated July 15th, 2021;
15 is that right?

16 A. It's at the bottom? July 15th,
17 that change order was sent out and the
18 procurement office was asking for that to
19 be sent back by that date.

20 Q. I see. So we discussed change
21 orders a little bit earlier, but this is
22 generally how the standard
23 non-therapeutic CPA contract has changed
24 its terms and provisions?

25 A. Correct. If anything is

1 changed, the one that we were first on
2 was the first one, and if anything was
3 changed from that one on would have been
4 done through a change order.

5 Q. And you said these are
6 generally not individually negotiated.
7 But DSS issues them and there might be a
8 conversation about the contents of the
9 change order. But otherwise, they aren't
10 rejected by the CPA or negotiated by the
11 CPA?

12 A. So individually negotiated?
13 Typically not, because when you have
14 Miracle Hill and a couple of other
15 providers that are doing the same work,
16 you don't want to have that kind of
17 closed door conversation, because you are
18 doing the same work. You may be doing it
19 a little bit differently, but you're
20 doing the same type of work. So anything
21 that we would like to see as an
22 organization as DSS, we would have that
23 conversation collaboratively to make sure
24 that we are all on the same page, unless
25 it's something that just totally falls

1 administrative rate affect whether DSS
2 expects Miracle Hill to comply with the
3 contract service requirements?

4 A. No, DSS expects Miracle Hill to
5 comply with the service requirements.

6 Q. And is that true regarding
7 Federal and State law as well?

8 A. So anything that is not in this
9 change order we still expect Miracle Hill
10 and any other provider to comply with.

11 Q. And that also would include any
12 non-discrimination provisions that might
13 be included in the contract or Federal or
14 State law?

15 A. If it's included in the
16 contract, then we expect Miracle Hill and
17 other providers to comply.

18 Q. If you look on the next page on
19 251, it says at the top, "The provider
20 must provide SCDSS a yearly foster home
21 recruitment and retention plan by
22 August 15th, 2021."

23 The way I understand this
24 change order, that means that was a new
25 requirement that was not in the contract

1 before but was applicable to all other
2 non-therapeutic CPAs in South Carolina;
3 is that right?

4 A. So all of the providers have to
5 send in to licensing, to FP health, their
6 plans for obtaining foster homes.

7 Q. Can you just briefly describe
8 what those plans look like and what
9 information they include?

10 A. I can't provide or tell you
11 what that is. Again, you see that it
12 says to that FP statewide foster parent
13 liaison. That's outside of my scope. I
14 can't provide or tell you anything about
15 that because I am not sure.

16 Q. And is the statewide foster
17 parent liaison, is that part of DSS?

18 A. It is.

19 MR. RAY: This might be all I
20 have, but if you wouldn't mind if we
21 could take a quick break so I can look
22 over my notes to see if there is
23 anything else.

24 MR. COLEMAN: You're saying
25 that's the end of all of your

1 questions or just for this document?

2 MR. RAY: I might have more
3 questions, I just want to take a look
4 at my notes to make sure.

5 MR. COLEMAN: Okay.

6 THE VIDEOGRAPHER: Now going off
7 the record, the time is 10:27.

8 (Off the record.)

9 THE VIDEOGRAPHER: Now back on,
10 the time is 10:37.

11 BY MR. RAY:

12 Q. I think I just have a few more
13 clarifying questions and I will be
14 finished.

15 So going back to DSS's
16 relationship with non-therapeutic CPAs
17 before this contract was entered into, I
18 believe you indicated that there were
19 other non-therapeutic CPAs providing
20 foster care services, but they weren't
21 receiving the administrative rate for it;
22 is that right?

23 A. So we had other non-therapeutic
24 CPAs that were not receiving the \$10 per
25 day per child, but if they requested it,

1 we would have given it to them also.

2 Q. And does that mean that those
3 CPAs were not receiving funding through
4 DSS before this contract was entered
5 into?

6 A. No, that doesn't mean that. So
7 the provider, the foster homes get a
8 board rate. They weren't receiving the
9 \$10 per day per child. But the providers
10 are given a board rate and those go to
11 the foster homes.

12 Q. And so that's just a different
13 type of reimbursement that the
14 non-therapeutic CPAs were receiving,
15 that's different than the \$10 per child
16 per day?

17 A. So those go straight to the
18 foster homes that CPA providers have
19 licensed. The \$10 per child per day is
20 an administrative rate.

21 Q. I see. And then another
22 question. Sorry, if you can just clarify
23 what a board rate was before this
24 contract was entered into.

25 A. So a board rate, so for a,

1 quote unquote, and this is how I defined
2 it and used to define it before we called
3 it non-therapeutic. Our regular foster
4 home, even a DSS foster home, we have a
5 rate that we give foster parents. It's a
6 rate that's set by legislators and this
7 is the rate. So that's what CPA
8 providers, known as non-therapeutic to me
9 previously before this contract was
10 regular foster homes.

11 Q. I see. And they received that
12 rate because at that time DSS considered
13 them to be DSS foster homes; is that
14 right?

15 A. They are all, to me, they are
16 all homes that could be utilized for DSS
17 because they are licensed foster homes.
18 They are CPA providers, although the
19 private agency licensed them. They are
20 homes that DSS can still utilize because
21 they are foster homes, so our kids need
22 foster homes so we can still utilize
23 them. But they were getting a regular
24 board rate. I think the difference is
25 that you have non-therapeutic and

1 therapeutic. Those are the only two
2 differences that you would have in a
3 rate.

4 Q. I see, okay. That was very
5 clear, thank you. And one other
6 question. If a CPA was refusing to
7 conduct home studies to get any families
8 licensed, would that CPA be in compliance
9 with the requirement that it have
10 families available for placement?

11 A. So, again, I think for the
12 contract, it says contractor must make
13 foster homes for placement of children
14 approved. So we expect CPAs to have
15 those foster homes. If there was
16 something going on with the licensing
17 process, that's before we would actually
18 get involved. That's a licensing
19 standard and regulation.

20 Q. So if for whatever reason none
21 of a CPA's families were getting licensed
22 and the CPA was causing that, would that
23 put that CPA in breach of the contract?

24 A. So there is no recruitment,
25 there is no recruitment and pieces in

1 Q. There are a number of different
2 ways that a CPA could comply with this
3 requirement, right?

4 A. That is correct. We didn't
5 ascribe that in the contract.

6 Q. The requirement is that they
7 submit a plan?

8 A. Correct.

9 Q. As to how they go about doing
10 that, the contract is silent and so
11 that's a subject that you don't know
12 about, because that's someone else's area
13 and that is beyond what is required by
14 the contract?

15 A. That is correct.

16 Q. And then lastly, toward the end
17 of your testimony you said something, I
18 think, but I want to clarify, you may
19 have lapsed into a phrasing that
20 sometimes we use that may not technically
21 be correct. And I think we all
22 understand. But I want to make sure the
23 record is clear.

24 You're referring to what's
25 sometimes called the board rate or the

1 maintenance rate or payment that goes to
2 the family to provide foster care. And I
3 think you said that money goes to
4 families the CPAs have licensed. But
5 really the CPAs don't license any
6 families, do they, only DSS?

7 A. DSS does the licensing and
8 those funds go to those foster homes that
9 are licensed through DSS.

10 Q. The families might work with
11 the CPAs, but ultimately they are
12 licensed by DSS?

13 A. All homes are licensed by DSS
14 in South Carolina. All have to go
15 through the licensing process.

16 MR. COLEMAN: All right. Those
17 are the only questions I have.

18 Mr. Ray may have a few, Mr. Takemoto
19 may have a few, but I think I'm done.

20 MR. TAKEMOTO: I don't have any
21 further questions for the Federal
22 Defendants.

23 MR. RAY: I'm sorry, I just have
24 like two questions and then I promise
25 I will be finished.

1 EXAMINATION (Continued)

2 BY MR. RAY:

3 Q. So after the mistake in the
4 memo that resulted in Miracle Hill giving
5 that administrative rate, did DSS ever
6 tell any non-therapeutic CPA that they
7 would be eligible to receive that rate?

8 A. So I can imagine during that
9 time if a provider asked for that rate,
10 DSS would honor and provide them that
11 rate, that \$10 per day per child.

12 Q. But none of the other CPAs may
13 have known that that rate was available
14 to them?

15 A. So I've asked around, because
16 again in preparation for this, to ask why
17 didn't other providers get this rate, and
18 it is my understanding from asking around
19 that no other providers asked for this
20 rate. And so they were, Miracle Hill was
21 the only one getting the \$10 per day per
22 child until we did an emergency contract.

23 Q. And that might have been
24 because you didn't know about it, but you
25 just didn't know?

1 A. Again, I asked around, and
2 again in preparation for this, to see and
3 find out and did my due diligence of
4 trying to figure out, okay, Miracle Hill
5 is receiving this rate. Did other
6 providers receive this rate. Did other
7 providers request. And again, I wasn't
8 able to get that question answered.

9 Q. And then just one or two more
10 questions about the second page of the
11 change order regarding the foster home
12 recruitment and retention plan. I
13 believe you indicated in response to
14 Mr. Coleman's questions that there is no
15 specific form that plan must be submitted
16 in to DSS?

17 A. So when we sent out this change
18 order, we put the information in
19 accordance to what our program area
20 needs, the foster care recruitment plan,
21 and this is the information that's on
22 there. That plan actually goes to the
23 statewide foster parent liaison. So I
24 can't tell you how that form is sent to
25 them.

1 Q. But the plan must include
2 something about recruitment, right?

3 A. So it says foster home
4 recruitment and retention efforts.

5 Q. And if a CPA did not submit a
6 plan describing their recruitment
7 efforts, would they be in compliance with
8 this provision?

9 A. So if the CPA didn't submit a
10 plan, in whatever format, then I would
11 expect that our licensing department and
12 whoever uses statewide foster parent
13 liaison would get in contact and say we
14 didn't receive a plan from a particular
15 CPA.

16 Q. And because they didn't receive
17 a plan, that CPA would not be in
18 compliance with this requirement; is that
19 right?

20 A. So if the CPA didn't submit the
21 plan, the statewide foster parent liaison
22 would let me know and then I would follow
23 up with that CPA provider.

24 Q. And if that CPA provider
25 refused to provide a plan in response to